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| Kosiv v ATC Group Serv., Inc. |
| 2014 NY Slip Op 30719(U) |
| March 21, 2014 |
| Sup Ct, New York County |
| Docket Number: 105570/11 |
| Judge: Richard F. Braun |
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: Hon. RICHARD F. BRAUN
J.S.C.
Justice

PART 83

Index Number : 105570/2011
KOSIV, IGOR
vs.
ATC GROUP SERVICES, *et al.*
SEQUENCE NUMBER : 002
SUMMARY JUDGMENT

INDEX NO. _____
MOTION DATE 2/6/14
MOTION SEQ. NO. _____

The following papers, numbered 1 to 8, were read on this motion *and cross motion for summary judgment*

| | |
|---|-----------------------------|
| Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). <u>1, 2, 3</u> |
| <i>Notice of cross motion</i> Answering Affidavits — Exhibits _____ | No(s). <u>4, 5, 6, 7, 9</u> |
| Replying Affidavits _____ | No(s). <u>8</u> |

Upon the foregoing papers, it is ordered that this motion is *granted to the extent of awarding Defendant JVN Restoration, Inc. summary judgment dismissing Plaintiff's amended complaint and all cross claims as to that defendant, and the cross motion is denied without prejudice, and it is further*

ORDERED that the Clerk shall enter judgment accordingly, and the remaining claims are renewed and shall continue.

This constitutes the decision and order of the Court. See separate Opinion.

FILED

MAR 25 2014

COUNTY CLERK'S OFFICE
NEW YORK

Dated: New York, New York, March 20, 2014

ENTER, *[Signature]*, J.S.C.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
 DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 23

-----X
IGOR KOSIV,

Index No. 105570/11

Plaintiff,

OPINION

-against-

ATC GROUP SERVICES, INC. d/b/a ATC ASSOCIATES,
JVN RESTORATION ENVIRONMENTAL SERVICES
CONTRACTORS, INC., JVN RESTORATION, INC.,
SKANSKA USA INC., CHAMPION CONSTRUCTION CORP,
WING SPECIALTY TRADES and SKANSKA USA
BUILDING, INC.,

Defendants.

-----X
SKANSKA USA INC., WING SPECIALTY TRADES,
and SKANSKA USA BUILDING, INC.,

Third-Party Plaintiffs,

-against-

PINNACLE ENVIRONMENTAL CORPORATION,

Third-Party Defendant.

-----X
PINNACLE ENVIRONMENTAL CORPORATION,

Second Third-Party Plaintiff,

-against-

TRI-STATE TRANSFER ASSOCIATES, INC.,

Second Third-Party Defendant.

-----X

RICHARD F. BRAUN, J.:

This is a personal injury action arising from a construction accident. Plaintiff asserts causes

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of action sounding in common law negligence, liability under Vehicle and Traffic Law § 388, and Labor Law §§ 200, 240(1), and 241(6). Plaintiff was injured while loading a truck trailer with debris from asbestos removal in connection with renovations at the United Nations Secretariat Building. Defendant JVN Restoration, Inc. (“JVN”)* moves and defendant Champion Construction Corp. (“Champion”) cross-moves for summary judgment dismissing the complaint and all cross claims against those defendants.

A party moving for summary judgment must demonstrate his, her, or its entitlement thereto as a matter of law, pursuant to CPLR 3212 (b) (*Smalls v AJI Indus., Inc.*, 10 NY3d 733, 735 [2008]; *Ryan v Trustees of Columbia Univ. in the City of N.Y., Inc.*, 96 AD3d 551, 553 [1st Dept 2012]; *see Vega v Restani Constr. Corp.*, 18 NY3d 499, 503 [2012]). To defeat summary judgment, the party opposing the motion must show that there is a material question(s) of fact that requires a trial (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; *CitiFinancial Co. (DE) v McKinney*, 27 AD3d 224, 226 [1st Dept 2006]; *see Vega v Restani Constr. Corp.*, 18 NY3d at 503).

A summary judgment motion must be supported by copies of the pleadings (CPLR 3212[b]; *Williams v Nelson*, 71 AD3d 476, 477 [1st Dept 2010]). Due to defendant Champion’s failure to provide its answer to the verified amended complaint, its cross motion must be denied without prejudice (*Mouta v Essex Mkt. Dev. LLC*, 106 AD3d 549, 551 [1st Dept 2013]; *Krasner v Transcontinental Equities*, 64 AD2d 551 [1st Dept 1978]).

Defendant JVN has made a prima facie showing of its entitlement to summary judgment. Defendant JVN demonstrated that (1) it was not present at the accident location on the date of


* Defendant JVN Restoration Environmental Services Contractors, Inc. does not move.

plaintiff's accident, (2) it did no work in the building where the accident occurred, and (3) it had no connection to and did not supervise plaintiff's work (*see Comes v New York State Elec. & Gas Corp.*, 82 NY2d 876, 877 [1993]; *Pryor v City of New York*, 63 AD3d 508 [1st Dept 2009]; *Urban v. No. 5 Times Square Development, LLC*, 62 AD3d 553, 554 [1st Dept 2009]; *Melcher v City of New York*, 38 AD3d 376, 377 [1st Dept 2007]). Additionally, JVN is not a proper Labor Law defendant insofar it was not an owner, general contractor, or statutory agent with the authority to supervise and control plaintiff's work (*see Walls v Turner Constr. Co.*, 4 NY3d 861, 863-864 [2005]; *Russin v Louis N. Picciano & Son*, 54 NY2d 311, 317-318 [1981]; *Nascimento v Bridgehampton Constr. Corp.*, 86 AD3d 189, 192-193 [1st Dept 2011]; *Harris v 170 E. End Ave., LLC*, 71 AD3d 408, 410 [1st Dept 2010]). In addition, JVN has showed that it did not own the trailer in which plaintiff was working, warranting dismissal of the cause of action under Vehicle and Traffic Law § 388 (*cf. Marchetti v Avis Rent-A-Car Sys.*, 249 AD2d 518 [2nd Dept 1998])[“The defendant Avis Rent-A-Car System, Inc., demonstrated that it did not own the vehicle that struck the plaintiffs' decedent and, therefore, there is no basis to hold it vicariously liable pursuant to Vehicle and Traffic Law § 388”].

Plaintiff and third-party defendant Pinnacle Environmental Corporation have not demonstrated that there is a question of fact for trial, and failed to make the threshold showing necessary under CPLR 3212(f) to deny summary judgment based upon a claimed need for outstanding discovery (*see 2386 Creston Ave. Realty, LLC v M-P-M Mgt. Corp.*, 58 AD3d 158, 162 [1st Dept 2008]). Speculation or the mere hope that discovery might uncover some evidence is insufficient (*MAP Mar. Ltd. v China Constr. Bank Corp.*, 70 AD3d 404, 405 [1st Dept 2010]; *Cooper v 6 W. 20th St. Tenants Corp.*, 258 AD2d 362 [1st Dept 1999]; *Moukarzel v Montefiore Med. Ctr.*, 235 AD2d 239, 240 [1st Dept 1997]).

Accordingly, by separate decision and order, dated March 20, 2014, the motion was granted and the cross motion denied without prejudice. This constitutes the opinion of the court.

Dated: New York, New York
March 21, 2014



RICHARD F. BRAUN, J.S.C.

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